FOURTH SECTION

DECISION

Application no. 30357/03
by M.
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 13 February 2007 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having regard to the above application lodged on 9 September 2003,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the formal declarations accepting a friendly settlement of the case.

Having deliberated, decides as follows:

THE FACTS

The applicant, M, is a British national who was born on 5 April 1969 and lives in Sheffield. She was represented before the Court by Mr C. Moller of Scott-Moncrieff, Harbour & Sinclair, a lawyer practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Mr J. Grainger of the Foreign and Commonwealth Office.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant suffered from a mental disorder diagnosed as a borderline personality disorder. She had a history of self harm since the age of eleven and at the age of fourteen she was made the subject of a care order. While she was in the care of a local authority she made allegations of sexual abuse against her adoptive father, Mr B. In this respect her responsible medical officer, Dr H, stated:

> "I understand that her adoptive father abused [the applicant] when she was a child. Consequent on her early abusive experiences, she has pervasive developmental mental disorder. This has been characterised in the past by drug dependency, serious self harm and emotional dysphoria. She continues to need psychotherapeutic support and care. Responsible psychiatrists, social workers, and nursing staff have always accepted the accuracy of [the applicant]'s account of sexual assault and abuse in childhood. Her symptoms, such as flash backs, are consistent with her description of the crimes committed against her."

The applicant came into contact with the psychiatric services in 1988. At the time she was aged 19 and serving a custodial sentence. In the course of that sentence she was transferred to Broadmoor Hospital under the provisions of section 47 of the Mental Health Act 1983 ("the 1983 Act"). Following her release from Broadmoor she spent several years living in supported accommodation in the community. On 20 October 1998 she was detained pursuant to section 3 of the 1983 Act at Chadwick Lodge, a medium secure psychiatric hospital in Milton Keynes.

On 5 August 2002 she was given a leave of absence from hospital pursuant to section 17 of the 1983 Act. Thereafter she lived in a hostel under the supervision of Dr H, her responsible medical officer. However, her leave of absence could be revoked by Dr H at any time and she remained liable to detention. One of the safeguards provided for by the Act was the role accorded to the "nearest relative" of the detained person. Amongst other things the nearest relative must, in general, be informed about the patients' admission to hospital and about any reviews of the patient's detention by Mental Health Review Tribunals ("MHRT"s).

In the present case, the applicant's nearest relative was Mr B. She wished that he were not but there were no legal means available to her to compel his replacement. Nor could anyone else make an application on her behalf to have him replaced on the grounds that he was unsuitable. The applicant has been extremely distressed by the knowledge that Mr B, as nearest relative, had access or potential access to confidential information about her. Dr H stated that:

> "M's inability to change her nearest relative does cause her anguish and could also adversely affect her mental state."

On 14 October 2002 the applicant brought judicial review proceedings against the Secretary of State for Health, seeking a declaration of incompatibility in relation to sections 26 and 29 of the 1983 Act (see below) on the grounds that the said provisions did not allow her any power to change or even make objections to the identity of her nearest relative.

The Secretary of State did not dispute that the said provisions were incompatible with the applicant's rights under Article 8. On 16 April 2003 the High Court found in favour of the applicant and on 19 June 2003, after consulting the parties, a declaration was made that:

> "Sections 26(1) and 29 of the Mental Health Act 1983 are incompatible with the Claimant's Convention rights, namely her right to respect for her private life under Article 8(1), in so far as the Claimant has no choice over the appointment, nor any legal means to change the appointment, of her nearest relative."

The Secretary of State did not appeal.

B. Relevant domestic law

The domestic law and practice relevant to the present application is described in the judgment of the Court in the case of *J.T. v. the United Kingdom* (striking out), no. 26494/95, 30 March 2000.

COMPLAINTS

The applicant had three complaints. First, she complained under Article 8 about the fact that her adoptive father, Mr B, who she claimed sexually abused her, was able to obtain access to private information about her because he was her "nearest relative" within the meaning of the 1983 Act. In particular, she complained about the fact that she could not apply to change the identity of her nearest relative since patients could not make such an application and since, in any event, concern by a patient about the relationship with the nearest relative did not constitute a ground for an application by someone on her behalf. She submitted that this situation had constituted a violation of her right to private life under Article 8.

Secondly, she complained about the fact that the only remedy she could obtain in domestic law was a declaration of incompatibility, which did not provide her with compensation and did not require the Government to change the law. As a result, she stated that she was not able to secure an effective remedy for the violation of her rights under Article 8, contrary to Article 13.

Thirdly, the applicant complained that the failure to change the law in relation to nearest relatives, pursuant to the friendly settlement in *J.T. v. the United Kingdom* (striking out), no. 26494/95, 30 March 2000, was a breach of Article 46 § 1 of the Convention.

THE LAW

On 18 November 2005 the Government informed the Court that they were willing to pursue a friendly settlement and they set out a number of proposals intended to rectify the incompatibility with the Convention existing in this case and fulfilling their commitment made when settling *J.T. v. the United Kingdom* ((striking out), no. 26494/95, 30 March 2000).

On 6 December 2005 the applicant's representatives sought clarification from the Government of certain matters relating to the timing of introducing the relevant legislation.

Upon receipt of the Government's response the applicant informed the Court on 31 January 2006 that she wished to settle the matter.

On 14 August 2006 the Court received a declaration from the Government updating their proposals for a friendly settlement of the case in the following terms:

> "The Government is planning to introduce a Mental Health Bill that will rectify the incompatibility in the cases of M. v UK and J.T. v UK, as part of a general modernisation of mental health legislation. It was to have been introduced in the current session of Parliament, but now looks more likely to be introduced in the next session, which begins in November of this year. The Government does not expect this to result in any delay in the implementation of the relevant measure.
>
> Since the Government first made the offer of a settlement, it has revised the mechanism by which it proposes that the incompatibility will be rectified. It now proposes to allow patients to apply to the county court for the displacement of their nearest relative and the appointment of a new nearest relative on specified grounds. Briefing on what is proposed has been published by the Department of Health. The Government is confident that this will fully rectify the incompatibility.
>
> If for any reason the proposed Mental Health Bill is not introduced or passed, the Government will rectify the incompatibility by using another suitable legislative vehicle. This might well be a Remedial Order under the Human Rights Act 1998, or there could be another Bill in which the necessary provisions could be included. If the Government do have to use an alternative legislative vehicle, they would endeavour to ensure that it would not result in the incompatibility being rectified any later than if the matter were dealt with in the Mental Health Bill.
>
> In addition, the Government would be prepared to offer £1,000 to the applicant in recognition of the anxiety she may have been caused by the current situation. The Government would also be prepared to pay the applicant's legal costs on the usual basis, namely that they have been actually and necessarily incurred, and are reasonable as to quantum, less any sums received by way of legal aid."

On 18 August 2006 the Court received a declaration from the applicant's representatives to the effect that the applicant had agreed to the Government's offer and was satisfied that the case should go no further. On 16 November 2006 the Mental Health Bill was introduced in the House of Lords. On 19 December 2006 the Government informed the Court that they had agreed with the applicant's representatives to pay the sum of GBP 5,000 inclusive of VAT in respect of the applicant's legal costs in this case.

The Court takes note of the friendly settlement reached between the parties. In particular, it takes note of the Government's undertaking to rectify the incompatibility identified in their declaration by the prompt enactment of the Mental Health Bill, currently pending before the House of Lords, or the use of a Remedial Order under the Human Rights Act 1998 in the event of any delay to this effect. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds that, in light of the Government's admission and undertaking, no other reason to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention).

Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

T.L. EARLY Josep CASADEVALL
Registrar President

M. v. THE UNITED KINGDOM DECISION